

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TYLER CLARK,	)	Case No. EDCV 09-1883 JC
Plaintiff,	)	
v.	)	MEMORANDUM OPINION AND
	)	ORDER OF REMAND
MICHAEL J. ASTRUE,	)	
Commissioner of Social	)	
Security,	)	
Defendant.	)	

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**I. SUMMARY**

On October 15, 2009, plaintiff Tyler Clark (“plaintiff”) filed a Complaint seeking review of the Commissioner of Social Security’s denial of plaintiff’s application for benefits. The parties have consented to proceed before a United States Magistrate Judge.

This matter is before the Court on the parties’ cross motions for summary judgment, respectively (“Plaintiff’s Motion”) and (“Defendant’s Motion”). The Court has taken both motions under submission without oral argument. See Fed. R. Civ. P. 78; L.R. 7-15; October 16, 2009 Case Management Order ¶ 5.

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1 Based on the record as a whole and the applicable law, the decision of the  
2 Commissioner is REVERSED AND REMANDED for further proceedings  
3 consistent with this Memorandum Opinion and Order of Remand because the  
4 Administrative Law Judge (“ALJ”) erroneously failed to address lay witness  
5 testimony supplied by plaintiff’s mother and the Court cannot find such error to be  
6 harmless.

7 **II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE**  
8 **DECISION**

9 On February 28, 2007, plaintiff filed an application for Supplemental  
10 Security Income benefits. (Administrative Record (“AR”) 8, 62). Plaintiff  
11 asserted that he became disabled on December 15, 2006, due to: “Post pardom  
12 [sic] stress due to violent act.” (AR 136). The ALJ examined the medical record  
13 and heard testimony from plaintiff (who was represented by counsel), a medical  
14 expert, a vocational expert and plaintiff’s mother on January 27, 2009. (AR 22-  
15 61).

16 On May 29, 2009, the ALJ determined that plaintiff was not disabled  
17 through the date of the decision. (AR 5-21). Specifically, the ALJ found:  
18 (1) plaintiff suffered from the following severe impairments, even apart from  
19 symptoms related to plaintiff’s substance abuse: Organic affective disorder,  
20 secondary to mixed substance abuse including amphetamines; personality  
21 disorder, not otherwise specified; and polysubstance abuse disorder (AR 10, 14);  
22 (2) plaintiff’s impairments, including the substance abuse disorders, met the listed  
23 impairments in sections 12.02, 12.08 and 12.09, but if plaintiff stopped his  
24 substance abuse, plaintiff had no impairments that, considered singly or in  
25 combination, met or medically equaled any of the listed impairments (AR 12, 14-  
26 15); (3) if plaintiff stopped his substance abuse, he retained the residual functional  
27 capacity to perform a wide range of work at all exertional levels with certain

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1 nonexertional limitations<sup>1</sup> (AR 15-16); (4) plaintiff had no past relevant work (AR  
 2 20); (5) if the plaintiff stopped his substance abuse, there are jobs that exist in  
 3 significant numbers in the national economy that plaintiff could perform (AR 20-  
 4 21); and (6) plaintiff's allegations regarding his limitations were not totally  
 5 credible (AR 16-17).

6 The Appeals Council denied plaintiff's application for review. (AR 1).

### 7 **III. APPLICABLE LEGAL STANDARDS**

#### 8 **A. Sequential Evaluation Process**

9 To qualify for disability benefits, a claimant must show that he is unable to  
 10 engage in any substantial gainful activity by reason of a medically determinable  
 11 physical or mental impairment which can be expected to result in death or which  
 12 has lasted or can be expected to last for a continuous period of at least twelve  
 13 months. Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005) (citing 42 U.S.C.  
 14 § 423(d)(1)(A)). The impairment must render the claimant incapable of  
 15 performing the work he previously performed and incapable of performing any  
 16 other substantial gainful employment that exists in the national economy. Tackett  
 17 v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

18 In assessing whether a claimant is disabled, an ALJ is to follow a five-step  
 19 sequential evaluation process:

- 20 (1) Is the claimant presently engaged in substantial gainful activity? If  
 21 so, the claimant is not disabled. If not, proceed to step two.
- 22 (2) Is the claimant's alleged impairment sufficiently severe to limit  
 23 his ability to work? If not, the claimant is not disabled. If so,  
 24 proceed to step three.

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25  
 26 <sup>1</sup>More specifically, the ALJ determined that plaintiff: (i) was restricted to object oriented  
 27 work in an environment with a small number of people; (ii) could not work with the public; and  
 28 (iii) could only perform simple repetitive tasks, but not in a fast paced environment (*e.g.*, rapid  
 assembly line). (AR 15-16).

- 1 (3) Does the claimant's impairment, or combination of
- 2 impairments, meet or equal an impairment listed in 20 C.F.R.
- 3 Part 404, Subpart P, Appendix 1? If so, the claimant is
- 4 disabled. If not, proceed to step four.
- 5 (4) Does the claimant possess the residual functional capacity to
- 6 perform his past relevant work? If so, the claimant is not
- 7 disabled. If not, proceed to step five.
- 8 (5) Does the claimant's residual functional capacity, when
- 9 considered with the claimant's age, education, and work
- 10 experience, allow him to adjust to other work that exists in
- 11 significant numbers in the national economy? If so, the
- 12 claimant is not disabled. If not, the claimant is disabled.

13 Stout v. Commissioner, Social Security Administration, 454 F.3d 1050, 1052 (9th

14 Cir. 2006) (citing 20 C.F.R. §§ 404.1520, 416.920).

15 The claimant has the burden of proof at steps one through four, and the

16 Commissioner has the burden of proof at step five. Bustamante v. Massanari, 262

17 F.3d 949, 953-54 (9th Cir. 2001) (citing Tackett); see also Burch, 400 F.3d at 679

18 (claimant carries initial burden of proving disability).

## 19 **B. Standard of Review**

20 Pursuant to 42 U.S.C. section 405(g), a court may set aside a denial of

21 benefits only if it is not supported by substantial evidence or if it is based on legal

22 error. Robbins v. Social Security Administration, 466 F.3d 880, 882 (9th Cir.

23 2006) (citing Flaten v. Secretary of Health & Human Services, 44 F.3d 1453, 1457

24 (9th Cir. 1995)). Substantial evidence is "such relevant evidence as a reasonable

25 mind might accept as adequate to support a conclusion." Richardson v. Perales,

26 402 U.S. 389, 401 (1971) (citations and quotations omitted). It is more than a

27 mere scintilla but less than a preponderance. Robbins, 466 F.3d at 882 (citing

28 Young v. Sullivan, 911 F.2d 180, 183 (9th Cir. 1990)).

1 To determine whether substantial evidence supports a finding, a court must  
2 “consider the record as a whole, weighing both evidence that supports and  
3 evidence that detracts from the [Commissioner’s] conclusion.” Aukland v.  
4 Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (quoting Penny v. Sullivan, 2 F.3d  
5 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming  
6 or reversing the ALJ’s conclusion, a court may not substitute its judgment for that  
7 of the ALJ. Robbins, 466 F.3d at 882 (citing Flaten, 44 F.3d at 1457).

#### 8 **IV. DISCUSSION**

##### 9 **A. A Remand is Appropriate Because the ALJ Erroneously Failed to** 10 **Address the Lay Testimony Supplied by Plaintiff’s Mother and** 11 **the Court Cannot Find That Such Error Was Harmless**

12 Plaintiff contends that a reversal or remand is appropriate because the ALJ  
13 failed adequately to address the testimony supplied by plaintiff’s mother and to  
14 provide adequate reasons for rejecting such evidence. The Court agrees. As this  
15 Court cannot find that the ALJ’s error was harmless, a remand is warranted.

##### 16 **1. Pertinent Facts**

17 On January 27, 2009, at the administrative hearing, plaintiff testified  
18 regarding his symptoms and limitations. (AR 25-32, 37-47). He stated, *inter alia*,  
19 that he: (i) had been beaten and tortured by unnamed individuals for  
20 approximately two to three hours and then dropped off at a park where he went to  
21 a neighbor and called his mother for help (AR 38-40); (ii) was told by the  
22 attackers, who were never caught, that they would kill him if he “ever told  
23 anybody” (AR 38); (iii) suffered serious injuries from the attack (*i.e.* broken nose,  
24 saw cut to the wrist, and burns on his leg from a torch) (AR 39); (iv) used to be  
25 very social but after the attack, became very paranoid, and felt “just in a hole,  
26 sitting there,” and was constantly “watching [his] back” in public out of fear that  
27 someone might still want to harm him (AR 38, 41); (v) had difficulty with  
28 concentration and memory, and was easily distracted as a result of the attack (AR

1 27, 37, 41, 43); (vi) was more polite, tolerant and nice to people due to the attack  
2 (AR 40); (vii) felt tired and had “a lot of mood swings” from his medication (AR  
3 42-44); (viii) last used “street drugs” in July of 2008 including marijuana and  
4 “speed,” but did not have a drinking problem that would keep him from working  
5 (AR 28, 32).

6 At the January 27, 2009 administrative hearing, plaintiff’s mother testified,  
7 *inter alia*, as follows: (i) after he was attacked, plaintiff had actually been found at  
8 4:30 a.m. bleeding and unconscious on the side of the road (AR 47-48); (ii) when  
9 he awoke, plaintiff had told the man who found him to not call the police because  
10 his attackers had threatened to kill plaintiff’s family (AR 48); (iii) plaintiff had  
11 also suffered “multiple facial fractures,” round blister marks on his legs (from  
12 being placed by his attackers in a freezer for an undetermined period of time), “a  
13 frontal lobe brain injury,” a “huge laceration” over his eye, multiple head  
14 contusions from being hit “repeatedly with the back of a gun,” and swastika marks  
15 carved with a knife on the back of each of his thighs (AR 48-49); (iv) two days  
16 after the attack, plaintiff and his family moved away from the area out of fear for  
17 plaintiff’s safety (AR 50); (v) Dr. Cameron Johnson at Loma Linda Behavioral  
18 Medical Center “discovered that [plaintiff] had a frontal lobe brain injury that  
19 coincided with [plaintiff’s] behavior that could be misinterpreted for doing drugs”  
20 (AR 50); (vi) based on an assessment in July 2008, plaintiff had been told he was  
21 “not ready for any gainful employment” (AR 51); (vii) in the two years and three  
22 months preceding the administrative hearing, plaintiff had been hospitalized  
23 overnight “over a dozen times” for mental health reasons (AR 51); (viii) only  
24 “some” of the hospitalizations were due to “drug-related incidences” (AR 51-52);  
25 (ix) plaintiff had not experienced mental health problems prior to being attacked  
26 (AR 52); (x) plaintiff had not improved in the prior two years, but was “more  
27 agitated” than previously, was short-tempered, paranoid, and suicidal, became  
28 angry/frustrated “very easily,” and had auditory hallucinations, difficulty

1 concentrating, and difficulty completing what he started (AR 52-54); and (xi)  
 2 plaintiff had nightmares and erratic sleeping patterns due to his medication (AR  
 3 57).

4 At the administrative hearing, Dr. Joseph Malancharuvil testified, in short,  
 5 that when plaintiff was using drugs he remained “totally nonfunctional,” but when  
 6 not using drugs, plaintiff suffered only mild limitations that would not prevent him  
 7 from working. (AR 19, 32-35). Dr. Malancharuvil also testified that trauma to  
 8 plaintiff’s brain was not the cause of “any significant behavioral or affective  
 9 disorder.” (AR 36).

10 The ALJ gave the testifying medical expert’s opinions “considerable weight  
 11 in reaching a conclusion as to [plaintiff’s] residual functional capacity.” (AR 19).  
 12 As for the lay testimony, the ALJ stated only that “[plaintiff’s] mother’s testimony  
 13 confirmed much of [plaintiff’s] testimony.” (AR 16).

## 14 **2. Pertinent Law**

15 Lay testimony as to a claimant’s symptoms is competent evidence that an  
 16 ALJ must take into account, unless he expressly determines to disregard such  
 17 testimony and gives reasons germane to each witness for doing so. Stout, 454  
 18 F.3d at 1056 (citations omitted); Lewis v. Apfel, 236 F.3d 503, 511 (9th Cir.  
 19 2001); see also Robbins, 466 F.3d at 885 (ALJ required to account for all lay  
 20 witness testimony in discussion of findings) (citation omitted); Regennitter v.  
 21 Commissioner of Social Security Administration, 166 F.3d 1294, 1298 (9th Cir.  
 22 1999) (testimony by lay witness who has observed claimant is important source of  
 23 information about claimant’s impairments); Nguyen v. Chater, 100 F.3d 1462,  
 24 1467 (9th Cir. 1996) (lay witness testimony as to claimant’s symptoms or how  
 25 impairment affects ability to work is competent evidence and therefore cannot be  
 26 disregarded without comment) (citations omitted); Sprague v. Bowen, 812 F.2d  
 27 1226, 1232 (9th Cir. 1987) (ALJ must consider observations of non-medical  
 28 sources, *e.g.*, lay witnesses, as to how impairment affects claimant’s ability to



1 work). The standards discussed in these authorities appear equally applicable to  
2 written statements. Cf. Schneider v. Commissioner of Social Security  
3 Administration, 223 F.3d 968, 974-75 (9th Cir. 2000) (ALJ erred in failing to  
4 consider letters submitted by claimant's friends and ex-employers in evaluating  
5 severity of claimant's functional limitations).

6 In cases in which "the ALJ's error lies in a failure to properly discuss  
7 competent lay testimony favorable to the claimant, a reviewing court cannot  
8 consider the error harmless unless it can confidently conclude that no reasonable  
9 ALJ, when fully crediting the testimony, could have reached a different disability  
10 determination." Robbins, 466 F.3d at 885 (quoting Stout, 454 F.3d at 1055-56).

### 11 3. Analysis

12 As the above-stated facts reflect, the testimony of plaintiff's mother is, on  
13 the whole, consistent with, and corroborates plaintiff's testimony regarding his  
14 symptoms and limitations. Plaintiff's mother's testimony was competent lay  
15 evidence that the ALJ was required to take into account unless he expressly  
16 determined to disregard it and gave reasons therefor. As plaintiff notes, the ALJ's  
17 residual functional capacity assessment implicitly rejects significant portions of  
18 testimony from both plaintiff and his mother. The ALJ erred in not providing any  
19 reasons for rejecting such portions of the mother's testimony.

20 The Court cannot conclude that this error was harmless because it cannot  
21 "confidently conclude that no reasonable ALJ, when fully crediting the testimony,  
22 could have reached a different disability determination." Stout, 454 F.3d at 1055-  
23 56. If fully credited, plaintiff's mother's testimony substantially supports  
24 plaintiff's description of his symptoms and limitations, and thus could have caused  
25 a reasonable ALJ to reach a different disability determination. Accordingly, this  
26 Court cannot deem the ALJ's failure to address the lay witness testimony supplied  
27 by plaintiff's mother harmless.<sup>2</sup>

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28 <sup>2</sup>Defendant suggests that because plaintiff's mother's testimony was largely consistent  
with plaintiff's testimony, it should be discounted for the same reasons that the ALJ discounted  
(continued...)



1 **V. CONCLUSION<sup>3</sup>**

2 For the foregoing reasons, the decision of the Commissioner of Social  
3 Security is reversed in part, and this matter is remanded for further administrative  
4 action consistent with this Opinion.<sup>4</sup>

5 LET JUDGMENT BE ENTERED ACCORDINGLY.

6 DATED: October 5, 2010

7 /s/

8 Honorable Jacqueline Chooljian  
9 UNITED STATES MAGISTRATE JUDGE

10  
11  
12  
13 <sup>2</sup>(...continued)

14 plaintiff's testimony. (Defendant's Motion at 9-10). Defendant also suggests that the ALJ  
15 "implicitly rejected the portion of plaintiff's mother's testimony that was inconsistent with the  
16 medical evidence." (Defendant's Motion at 9). While the ALJ may well have discounted  
17 plaintiff's mother's statements for such reasons, he did not so state in his decision, and the Court  
18 cannot so conclude on this record. This Court may not affirm the decision of an agency on a  
19 ground that the agency did not invoke in making its decision. See Stout, 454 F.3d at 1054  
20 ("[T]he ALJ, not the district court is required to provide [rationale] for rejecting lay testimony.")  
(citations omitted).

21 <sup>3</sup>The Court need not, and has not adjudicated plaintiff's other challenges to the ALJ's  
22 decision – that the ALJ failed properly to consider a February 26, 2009 narrative report from an  
23 unidentified medical source and an October 5, 2007 conservatorship declaration from Dr.  
24 Cameron Johnson, one of plaintiff's treating physicians – except insofar as to determine that a  
25 reversal and remand for immediate payment of benefits would not be appropriate. Nonetheless,  
26 on remand the ALJ may want to reassess such evidence (which appears to have been submitted  
27 after the administrative hearing, and thus was not reviewed by the testifying medical expert) and  
28 determine what, if any, impact it has on the disability determination.

29 <sup>4</sup>When a court reverses an administrative determination, "the proper course, except in rare  
30 circumstances, is to remand to the agency for additional investigation or explanation."  
31 Immigration & Naturalization Service v. Ventura, 537 U.S. 12, 16 (2002) (citations and  
32 quotations omitted). Remand is proper where, as here, additional administrative proceedings  
33 could remedy the defects in the decision. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir.  
34 1989).